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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,317	01/29/2004	James Versalovic	BIOA5311	6128

7590

10/17/2006

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EXAMINER

MARX, IRENE

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/767,317	VERSALOVIC ET AL.	
	Examiner	Art Unit	
	Irene Marx	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 13-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-12 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The application should be reviewed for errors.

To facilitate processing of papers at the U.S. Patent and Trademark Office, it is recommended that the Application Serial Number be inserted on every page of claims and/or of amendments filed.

Applicant's election without traverse electing to prosecute the invention of Group II, claims 8-12 and 29-31 on 7/17/06 is acknowledged.

Claims 8-12 and 29-31 are being considered on the merits. Claims 1-7 and 13-28 are withdrawn from consideration as directed to a non-elected invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim Rejections - 35 USC § 112

Claims 29-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29-31 are confusing in attempting to further define the compound produced rather than the producing bacterium.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-12 and 29-31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Panigrahi (U.S. Patent No. 6,682,744).

The claims are directed to a bacterium that produces anti-inflammatory activity, which may be secreted, the bacterium may be *Lactobacillus*.

Panigrahi discloses bacteria that produce a compound that comprises anti-inflammatory activity. See, e.g., Panigrahi, col. 6. The compounds produced have anti-inflammatory activity,

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are polypeptides, and comprise receptor-binding activity and cytokine or chemokine expression regulating activity at least to some extent..

Claims 8-12 and 29-31 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Collins *et al.* (U.S. Patent Application Publication No. 20030166257).

The claims are directed to a bacterium that produces anti-inflammatory activity, which may be secreted, the bacterium may be *Lactobacillus*.

Collins *et al.* discloses bacteria that produce a compound that comprises anti-inflammatory activity. See, e.g., Example 4. The compounds produced have anti-inflammatory activity, are polypeptides, and comprise receptor-binding activity and cytokine or chemokine expression regulating activity at least to some extent..

Claims 8-9, 11-12 and 29-31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Steidler *et al.* (U.S. Patent No. 6,746,671)

The claims are directed to a bacterium that produces anti-inflammatory activity, which may be secreted.

Steidler *et al.* disclose bacteria that produce a compound that comprises anti-inflammatory activity. See, e.g., Steidler *et al.*, col. 8. The compounds produced have anti-inflammatory activity, are polypeptides, and are presumed to comprise receptor-binding activity and cytokine or chemokine expression regulating activity at least to some extent..

Claims 8-9, 11-12 and 29-31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Steidler *et al.* (Science (Washington, D. C.) (2000), 289(5483), 1352-1355)

The claims are directed to a bacterium that produces anti-inflammatory activity, which may be secreted.

Steidler *et al.* disclose bacteria that produce a compound that comprises anti-inflammatory activity. See, e.g., Steidler *et al.*, page 1353, paragraph 1. The compounds produced have anti-inflammatory activity, are polypeptides, and are presumed to comprise receptor-binding activity and cytokine or chemokine expression regulating activity at least to some extent..

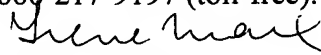
No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Irene Marx
Primary Examiner
Art Unit 1651